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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/769,587

01/30/2004

Erez Pick

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8584

28120

7590

04/28/2006

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EXAMINER

PHAM, HUONG Q

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 04/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/769,587

Applicant(s)

PICK, EREZ

Examiner

Huong Q. Pham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20060414
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed "inflatable air cell", the "means for communication", and the "protruding region" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It appears that the recited “ dual layer” is a double recitation of the previously recited “ rigid sole portion” . This makes it's unclear whether these recited structure are different structures.

Claims 2- 18 are objected to as being dependent on the rejected claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8 –10 are rejected under 35 U.S.C. 102(b) as being anticipated by Pick (6,027,468).

Pick teaches a walking brace comprising a leg portion (figure 1) adapted to fit substantially around the lower leg of a patient, a rigid sole portion adapted to fit beneath the foot of a patient, said rigid sole portion having an opening 33 there through in the area of the patient's heel, said opening extending through an upper surface and a lower surface of said rigid sole portion, such that no portion of said rigid sole portion is disposed below the patient's heel; and a dual layer 28, 30 of resilient shock-absorbing material disposed along said bottom surface of said rigid sole portion, said dual layer of resilient shock-absorbing material having a heel portion 31, 35 extending upwardly through said opening 33 in said sole portion to a height no greater than substantially slightly above said upper surface of said rigid sole portion, said dual layer comprising an upper layer 28 of a relatively softer material and a lower layer 30 of a relatively more durable material, said upper layer 28 being in contact with the patient's heel, said lower layer 30 being in contact with the ground when the patient walks. As for 2, note that the heel portion 31, 35 is "integrally " formed with said upper layer 28 of said dual layer of shock absorbing material. As for claim 3, note that the heel portion 31, 35 (figure 2) has an upper surface substantially coplanar with said upper surface 25 of said sole portion (when the foam layer 28 is depressed when walking or standing) . As for claim 4, note that the material of the lower layer has a greater density than the material of said upper layer 28 of said dual layer. As for claim 5, note that the lower layer 30 of said dual layer is made of a material selected from the group consisting of polyvinyl chloride. As for claim 8, note the foam layer 35, 28 (figure 2). As for claim 9, note the rigid shell 13 (

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figure 1). As for claim 10, note that Pick's device has least one inflatable air cell for providing therapeutic pressure to said leg (column 3, lines 40-55).

Claims 19-23, 25, 30-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Gray (5,836,902).

Gray teaches every claimed feature of the claims including a leg portion (note figures 11, 12) integral with a rigid sole portion, the rigid shell comprises a rear shell member (figures 11, 12: the back part of the splint), and a front shell member (figures 11, 12: the front part of the splint), means 52, 53 for expanding the width thereof, longitudinal slit (figure 12) and longitudinal aligned slit, septa 36, 46. As for claims 30-31, note strap 54 (note figures 9, 11, 13) , a pin member (figure 13) , retaining means (D ring), and note that strap 54 is capable of being releasably engaging the pin (figure 13). Note that criticality has not been established for the recited securing means for the strap. The provision of a securing means for releasably securing a strap to a brace is well within the realm of on ordinary skill in the art.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pick (6,027,468) in view of Rosendahl (6,282,816).

Rosendahl teaches an upper layer 14 made of ethylene vinyl acetate polymer. In view of the teaching of Rosendahl t , it would have been obvious to one ordinary skill in the art at the time the invention was made to provide the device of Pick with an upper layer made of ethylene vinyl acetate polymer in order to provide the desired degree of resiliency or cushioning.

Claims 7, 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pick (6,027,468).

As for claim 7, note that Pick shows in figure 2 that the thickness of said dual layer from the top surface of the heel portion to the bottom surface of the bottom layer is no greater than about 1 inch, and note that the provision for the thickness of layers is well within the realm of one ordinary skill in the art. As for claim 11, note that the provision for the communication means for air cells is well known and is well within the realm of one ordinary skill in the art. As for claim 12, note that the rigid shell 17 (figure 1) has at least one protruding region capable of receiving a communication means, such that said communication means is directed toward the front side of said walking brace.

Claims 13 –18 , 26-28 , 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gray (5,836,902) in view of Pick (6,027,468).

Gray teaches a rigid shell comprises a rear shell member (figures 11, 12: the back part of the splint), and a front shell member (figures 11, 12: the front part of the splint), means 52, 53 for expanding the width thereof.

Pick teaches a walking brace comprising a leg portion (figure 1) adapted to fit substantially around the lower leg of a patient, a rigid sole portion adapted to fit beneath the foot of a patient, said rigid sole portion having an opening 33 there through in the area of the patient's heel, said opening extending through an upper surface and a lower surface of said rigid sole portion, such that no portion of said rigid sole portion is disposed below the patient's heel; and a dual layer 28, 30 of resilient shock-absorbing material disposed along said bottom surface of said rigid sole portion, said dual layer of resilient shock-absorbing material having a heel portion 31, 35 extending upwardly through said opening 33 in said sole portion to a height no greater than substantially slightly above said upper surface of said rigid sole portion, said dual layer comprising an upper layer 28 of a relatively softer material and a lower layer 30 of a relatively more durable material, said upper layer 28 being in contact with the patient's heel, said lower layer 30 being in contact with the ground when the patient walks.

In view of the teaching of Pick, it would have been obvious to one ordinary skill in the art at the time the invention was made to provide the device of Gray with a rigid sole portion with dual layer of resilient shock-absorbing material as recited in order to provide the user with the desired degree of resilient shock-absorbing material. As for

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claims 14-18, note figure 12 of Gray. As for claims 26, 29, Pick teaches air cell having means for communication . In view of the teaching of Pick, it would have been obvious to one ordinary skill in the art at the time the invention was made to provide the device of Gray with air cell for cushioning and with communication means for communication between the interior of the air cell and the atmosphere. As for claim 29, note that the rigid shell 17 (figure 1) of Pick has at least one protruding region capable of receiving a communication means, such that said communication means is directed toward the front side of said walking brace. Note that the provision for a protruding region for receiving a communication means to minimize the contact pressure between the user and the communication means is well within the realm of one ordinary skill in the art, and does not provide any unobvious result, and therefore is not patentable.

Claim 24 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gray (5,836,902).

Note the plurality of longitudinal slits 53 (figure 12) , and note that the laterally spaced apart large holes (near the slits 53) form the recited longitudinal slits. The laterally spaced apart large holes are capable of providing more flexibility for the rear shell to expand . In view of the teaching of the slits for expanding the rear shell of Gray, it would have been obvious to one ordinary skill in the art at the time the invention was made to provide the device of Gray with laterally spaced apart longitudinal slits in order to provide different laterally locations at which the rear shell is able to expand .

Claims 1, 11-12, 13, 15-16, 21-22, 25, 26, 27, 29 are objected to because the claims include terms which are indefinite or lack proper antecedent basis: "said upper surface and said lower surface" (claims 1, 27), "said bottom surface" (claim 1), "the interior" (claims 11, 26, 29), "the front side" (claims 12, 26, 29), "the width" (claims 13, 22), "the upper edge" (claims 13, 15, 16, 21, 22), "the upper end" (claims 21, 22 and 16), "the longitudinal slit" (claim 16), "the shell member" (claim 22). As for claim 25, "a least" appears to be misspelled.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huong Q. Pham whose telephone number is (571) 272-4980. The examiner can normally be reached on 7:15 AM - 3:45 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272 - 4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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April 25, 2006

A handwritten signature in black ink, appearing to read "Michael A. Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

MICHAEL A. BROWN
PRIMARY EXAMINER